



ACQUISITION AND  
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON DC 20301-3000

Oct 7, 1997

DP (DAR)

In reply refer to  
DAR Tracking Number: 97-00008

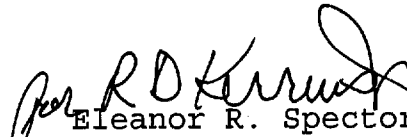
MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN(RD&A)/ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
ASSISTANT DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)/DIRECTOR OF CONTRACTING  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Class Deviation--Equal Employment Opportunity

Effective immediately, all military departments and defense agencies shall deviate from the requirements of Federal Acquisition Regulation (FAR) Subpart 22.8, Equal Employment Opportunity. Specifically, contracting officers shall implement the attached procedures for obtaining preaward compliance clearances in lieu of those in FAR 22.805, and shall no longer use the provision at 52.222-21, Certification of Nonsegregated Facilities, prescribed in FAR 22.810(a)(1).

This class deviation implements a Department of Labor final rule that was published in the Federal Register on August 19, 1997 (62 FR 44174). In part, the final rule eliminates the requirement to obtain a certification of nonsegregated facilities from prospective contractors, and increases from \$1 million to \$10 million the threshold for, and amends the timing of, obtaining from the Office of Federal Contract Compliance Programs preaward compliance clearance of prospective contractors and subcontractors.

This class deviation is approved until December 31, 1998, or until the FAR is revised, whichever occurs first.

  
Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



**PART 22--APPLICATION OF LABOR LAWS TO GOVERNMENT  
ACQUISITIONS**

\* \* \* \* \*

**22.805 Procedures.**

(a) *Preaward clearances for contracts and subcontracts of* ~~[\$10]~~*\$1 million or more (excluding construction).* (1)

Except as provided in 22.805(a)(7) below, if the estimated amount of the contract, subcontract, or basic ordering agreement is expected to aggregate ~~[\$10]~~*\$1 million or more* or to increase the aggregate value of an existing contract to ~~[\$10]~~*\$1 million or more*, the contracting officer shall request the appropriate OFCCP regional office to determine whether a contractor is awardable before--

(i) Award of any contract, including any indefinite delivery contract or letter contract;

(ii) Modification of an existing contract for new effort that would constitute a contract award; or

(iii) The issuance of any basic ordering agreement.

(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of ~~[\$10]~~*\$1 million or more* shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed in writing.

(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward review to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home or branch office. If the proposed contractor has no corporate office or location within the United States, the preaward review request action should be based on the location of the recruiting and training agency in the United States.

(4) The contracting officer shall include the following information in the preaward review request:

(i) Name, address, and telephone number of the prospective contractor and of any corporate affiliate at which work is to be performed.

(ii) Name, address, and telephone number of each proposed first-tier subcontractor with a proposed subcontract estimated at ~~[\$10]~~*\$1 million or more*.

(iii) Anticipated date of award.

(iv) Information as to whether the contractor and first-tier subcontractors have previously held any Government contracts or subcontracts.

(v) Place or places of contract performance and first-tier subcontracts estimated at ~~[\$10]~~\$1 million or more, if known.

(vi) The estimated dollar amount of the contract and each first-tier subcontract, if known.

(5) The contracting officer shall allow as much time as feasible before award for the conduct of necessary reviews by OFCCP. As soon as the apparently successful contractor can be determined, the contracting officer shall process a preaward review request in accordance with agency procedures, assuring, if possible, that the preaward review request is submitted to the OFCCP regional office at least ~~[15]~~30 calendar days before the proposed award date.

(6) ~~[If OFCCP does not inform the contracting officer, within 15 days of the preaward review request, of its intention to conduct a preaward compliance evaluation, clearance shall be presumed, and the contracting officer is authorized to award the contract. If OFCCP does inform the contracting officer, within 15 days of the preaward review request, of its intention to conduct a preaward compliance evaluation, OFCCP shall be allowed an additional 20 days after the date that it so informs the contracting officer. If OFCCP does not provide the contracting officer with its conclusions within that 20 day period, clearance shall be presumed, and the contracting officer is authorized to award the contract.]~~In the event the Director has not made a final preaward clearance determination within 30 calendar days from submission of the clearance request, the contracting officer shall withhold award of the contract for an additional 15 calendar days, or until clearance is received, whichever occurs first. If the additional 15 calendar days expire, and the Director has not either found the contractor to be in compliance or made a final written determination declaring the contractor ineligible for reasons of noncompliance, the award may be made to the contractor in question. The contracting officer shall notify the OFCCP regional office of the award.

(7) If the procedures specified in (a)(5) and (a)(6) above would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the offer or extension thereof, the contracting officer shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward review cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under

this authority, the contracting officer shall immediately request a postaward review from the OFCCP regional office.

(8) If, under the provisions of (a)(7) above, a postaward review determines the contractor to be nonawardable, the Director, may authorize the use of the enforcement procedures at 22.809 against the noncomplying contractor.

(b) *Furnishing posters.* The contracting officer shall furnish to the contractor appropriate quantities of the poster entitled "Equal Opportunity Is The Law." These shall be obtained in accordance with agency procedures.

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#### 22.810 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the following provisions [at 52.222-22, **Previous Contracts and Compliance Reports,**] in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity-

~~—(1) 52.222-21, Certification of Nonsegregated Facilities, if the amount of the contract is expected to exceed \$10,000.~~

~~—(2) 52.222-22, Previous Contracts and Compliance Reports.~~

(b) \* \* \*

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